

In the claims:

✓
Claim 1, line 3, after "testing" insert --suspected of--.

REMARKS

This is in response to the Official Action mailed June 22, 1999 for the above-captioned application. Reconsideration of the application in view of the following remarks is respectfully requested.

The Examiner rejected claims 1, 2, 4 and 5 under 35 USC § 102(b) as being anticipated by US Patent No. 5,387,508. The Examiner asserts that this patent discloses "various types of whole effluent samples" and in particular discloses a WET sample in Example 5 in col. 6. It is important to note, however, that claim 1 of the present invention requires that the whole effluent sample be combined "directly" with the culture, i.e., "without any requirement for concentration of the sample prior to combining it with the growing culture." (Application, Page 4, lines 7-8). This characteristic of the invention provides important advantages which were not achieved by the method as disclosed in the inventor's earlier patent. In particular, because the sample is used directly, the test is simpler and more economical to perform. In addition, whenever one performs a concentration step, there is some likelihood (depending on the concentration method used) that the resulting sample will not in fact be a whole effluent sample because one or another of the components of the original sample may have been lost through reaction, evaporation, or capture on or in the concentrating apparatus.

The '508 patent does not disclose a process in which a whole effluent sample is added directly to a culture of a growing flagellate. The example to which the Examiner specifically refers relates to a spiked sample, not a naturally occurring whole effluent sample, used for testing adaptive response to 2-aminofluorene. The examples which do relate to natural samples (Example 7 and 8) both disclose a concentration step prior to the addition to the culture of *T. rostratus*. Thus, these are not whole effluent samples, and there is no teaching of the claimed invention (i.e., of direct addition of a whole effluent sample to a culture) which would support a rejection under 35 USC § 102. Furthermore, there is no suggestion in the reference